LAW COMMISSION OF INDIA

THIRTY-SIXTH REPORT

(SECTIONS 497, 498 AND 499 OF THE CODE OF CRIMINAL PROCEDURE, 1898—GRANT OF BAIL WITH CONDITIONS)

DECEMBER, 1967

GOVERNMENT OF INDIA ● MINISTRY OF LAW

Price : Re. 0.70 or 1 sh. 8d. or 26 cents

CHAIRMAN,
LAW COMMISSION,
5, Jorbagh, New Delhi-3,
Dated the 9th January, 1968.

Shri P. Govinda Menon,
Minister of Law,
New Delhi.

My dear Minister,

I have great pleasure in forwarding herewith the thirty-sixth Report of the Law Commission on sections 497, 498 and 499 of the Code of Criminal Procedure, 1898 and the grant of bail with conditions.

2. The circumstances in which the subject was taken up for consideration are stated in the first paragraph of the Report. As the matter was understood to be of an urgent nature, a draft Report on the subject was prepared as soon as the subject was taken up.

(The usual Press Communique inviting the public to express its views was not issued, having regard to the urgency of the subject).

3. The draft Report was considered at Ninety-first meeting of the Law Commission, held on the 16th December, 1967 and approved with certain modifications.

The Report was revised accordingly.

4. In the drafting of this Report the Commission received valuable help from its Secretary Mr. Bakshi.

(It was decided that in view of the urgency of the matter the draft Report need not be circulated to State Governments, High Courts, etc. for comments).

Yours sincerely,
J. L. Kapur.

REPORT ON SECTIONS 497, 498 AND 499 OF THE CODE OF CRIMINAL PROCEDURE 1898— GRANT OF BAIL WITH CONDITIONS

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APPENDIX

REPORT ON SECTIONS 497, 498 AND 499 OF THE CODE OF CRIMINAL PROCEDURE, 1898—GRANT OF BAIL WITH CONDITIONS

Subject why taken up separately.

1. This Report deals with the question whether, under sections 497 and 498 of the Code of Criminal Procedure, 1898, bail can be granted with conditions. There is a suggestion made by a State Government for an amendment of the law on the subject,[1] and, as it appeared that early action on the suggestion was desired,[2] it was decided that the matter should be taken up separately from the general revision of the Code.

Existing provisions (sections 496 to 500).

2. A brief resume of the provisions of the Code[3] on the subject may be useful, before the amendment suggested[4] is considered in detail.

As regards *bailable offences,* under section 496 (so far as is relevant), if a person other than a person accused of a non-bailable offence is prepared at any stage of the proceedings before the Court to give bail, "such person *shall be released* on bail". There is, thus, an absolute right to bail.[5]

3. So far as *non-bailable* offences are concerned, under section 497(1), a person accused or suspected of the commission of such offence "*may be released* on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life". (There is a proviso regarding persons under the age of sixteen years, and women, etc., but it is not important for the present purpose. Nor is it necessary to refer to the other sub-sections of section 497).

Thus, the Court has a limited discretion. But the section itself is silent about the imposition of conditions.

4. Under section 498(1) (so far as is relevant), the High Court or the Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail or that the bail be required by a police officer or Magistrate be reduced.

Thus, there is a very wide discretion.[6] But there is no mention of conditions.

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1. Paragraphs 6 and 19, *infra.*
2. Correspondence in the Law Commission's file relating to the Code of Criminal Procedure, 1898, in November—December, 1967.
3. Section 496—500 of the Code.
4. Paragraphs 6 and 19, *infra.*
5. *See* also paragraph 15, *infra.*
6. *Cf. Mahmood Muzaffar,* A.I.R. 1963 All. 127.

5. Under section 499(1), before any person is released on bail, a bond shall be executed by such person and his sureties, "conditioned that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be".

Under section 500(1), as soon as the bond is executed, "the person for whose appearance it has been executed *shall be released*".

Section 497 (1)—Suggestion regarding.

6. The amendment suggested by the State Government[1] seeks to replace section 497(1) as follows:—

"(1) When any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer incharge of a police station, or appears or is brought before a court, he may be released on bail which may be *subject to such conditions as may appear necessary in a particular case if the offence is one punishable with imprisonment extending to seven years or more or is one falling under Chapters VI, XVI and XVII of the Indian Penal Code including abetment, conspiracy or attempt to commit any such offence,* but shall not be so released if there appear reasonable grounds for believing—

Chapter VI I.P.C.—Sections 121 to 130. Chapter XVI I.P.C.—Sections 299 to 377. Chapter XVII I.P.C.—Sections 378 to 462.

(i) *that he is likely to tamper with the evidence; or*

(ii) that he has been guilty of an offence punishable with death or imprisonment for life;

Provided that the court may direct that any person under the age of 16 years or any woman or any sick or infirm person accused of such an offence be released on bail.

Explanation.—In granting a conditional bail the court may impose conditions like requiring the person to reside in a particular locality or to report to the police or any other specified authority."

Report of U.P. Police Commission.

7. The above suggestion[2] regarding amendment of section 497 was made by the Government of Uttar Pradesh in

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1. Law Commission's file No. F.3(2)/55-L.C. Part IV, S. No. 238 and F.3(2)/55-L.C. Part VI, S. No. 261.

2. Paragraph 6, *supra*.

pursuance of the recommendation made by the U.P. Police Commission,[1] which is quoted below:—

> "We have received overwhelming evidence that after being bailed out the bullies and goondas tamper with evidence, threaten witnesses, and sometimes commit crimes afresh. It was urged that the powers of the Sessions Court to grant bail are too wide and restrictions similar to those applicable to Magisterial Court, should be placed on its powers. We agree that the court which has the power to try and acquit an accused should have full powers to deal with interim matters. We also feel that any absolute restriction on the powers of the Sessions Court would lead to inconvenience and expense inasmuch as the accused will have more often to run to the High Court. *We, however, recommend* that the law should be amended authorising the Sessions Court to grant conditional bail in appropriate cases relating to specified offences such as dacoity, murder, etc., "In granting a conditional bail the court may impose conditions requiring the person to reside in a particular locality or to abstain from visiting a particular locality, or to report daily to the police or any other specified authority. *It should also be provided* by law that in granting bail it should also be considered whether the accused is likely to tamper with the evidence.....".

Suggestion relating to section 497 analysed.

8. Broadly speaking, the following changes would result, if the proposed amendment[2] of section 497 is accepted—

(i) a power of imposing conditions while releasing on bail will be conferred expressly; and

(ii) release on bail would be prohibited if the *person concerned is likely to tamper with the evidence.*

Case-law as to conditional bail—sections 497 and 498.

9. So far as the first point[3] is concerned, the position is not entirely satisfactory. A few illustrative cases may be mentioned to show the existing position. Before the Calcutta High Court,[4] the question arose whether, in the case of an offence under section 124A, Indian Penal Code (a non-bailable offence), a condition could be imposed to the effect that the person released on bail would not deliver any speech until disposal of the case. The condition was regarded as beyond the competence of the Court. It was stated, that only a condition for "attendance in Court" could be imposed.

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1. Report of the U.P. Police Commission, paragraph 152, referred to in the suggestion.

2. Paragraph 6, *supra*.

3. Paragraph 8(i), *supra*.

4. *Giani Mehar Singh* v. *Emp.*, I.L.R. (1939) 2 Cal. 42; A.I.R. 1939 Cal. 714; 43 C.W.N. 639 (Edgeley J.).

In an early Calcutta case,[1] the conditions were as follows:—

> "The sureties in each case must be zemindars of the district whose names as such are written in the towji of the Collector, and no one zemindar will be accepted as surety for more than one of the accused, *i.e.*, there must be twice as many zemindar sureties as there are accused". As to this condition the High Court observed—
>
> > "This would make it necessary that the accused should find sixteen zemindars to give bail for them. The Judge, upon an application under section 436, reduced the security required for the appearance of the accused from rupees 96,000 to rupees 6,000."

We may observe 'that the conditions that the sureties should be zemindars and that no one zemindar should be accepted as surety for more than one of the accused, throwing unnecessary difficulties in the way of the defendants procuring bail, *were illegal*, and such as the Magistrate had no right to impose.'.

10. In another Calcutta case,[2] (which did not involve any question of the validity of conditions generally), a condition imposed on A that he should not leave the limits of Midnapore was set aside, as A was living with his family at Kharagpur. The High Court regarded the condition as one which the accused could not possibly comply with, and, which was, therefore, "tantamount to refusing the bail"

In an earlier Calcutta case,[3-4] a condition was imposed with *the consent of* the accused that "he be guarded at his own house and debarred from all communications with persons said, rightly or wrongly, to be his associates in crime".

11. The Madras High Court[5] and the Andhra Pradesh High Court[6] have upheld conditions under section 497.

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1. *In the matter of Mahesh Chandra Banerjee*, (1870) 13 W.R. Criminal 1; 4 Bengal Law Reports, Appendix 1, 10.

2. *Kamla Pandey* v. *The King*, A.I.R. 1949 Cal. 382; 53C.W.N. 699 (Harries C.J. and J.P. Mitter J.).

3. *Rajah Narendra Lal Khan* v. *K.E.*, 13 C.W.N. 43, 50 (Shurfuddin and Coxe JJ.).

4. For comment, see E.H. Monnier, Article on bail, 13 C.W.N. (Journal), pages 3, 5 and Editorial Note in 13 C.W.N. (Journal), page 9.

5. *In re Varadaraja*, (1957) 1 M.L.J. Cri. 717 (Ramaswami J.) (Reviews cases) noted in A.I.R. 1965 Andhra 444.

6. *In re Saradamma*, A.I.R. 1965 Andhra 444 (Venkatesam J.).

12. A condition that the accused should report every day at the police station has been upheld in a Madhya Pradesh case, as not restrictive of his movements.[1]

A restriction to the effect that the accused should be kept in a "Mahila Ashram" was held by the Chief Court of Oudh to be void, on the ground that the accused is not "released" within the meaning of section 500, and that the court has no power to put any restrictions on the movements of the accused.[2]

"So long as the accused lived in the Mahila Ashram under the order of the Court, she was virtually in the custody of the Court."

13. As regards powers of the High Court under section 498, it was observed in a Nagpur case,[3] that the court was unaware of any restrictions on the High Court's power of imposing conditions on which it grants bail. "It is open, for instance, to the High Court in granting bail, where an accused person has been convicted of making a seditious speech, to impose the conditions that the accused should abstain from addressing any public meeting or publishing any matter until the decision of the appeal....."

14. In a Lahore case,[4] the validity of a condition imposed by the Magistrate under section 497 to the effect that the person released shall attend the investigation when needed, was upheld: (On the merits, however, the condition was set aside).

15. In bailable cases, *i.e.*, those governed by section 496, the court cannot, it seems, impose conditions, as the accused has a *right*[5-6-7-8-9] to bail. (Nor can a police-officer impose conditions requiring attendance before the police).[8] Case-law as to conditional bail under section 496.

This does not, of course, affect the High Court's power to *cancel bail* in case of abuse.[10] "This jurisdiction springs from the over-riding inherent powers of the High Court and can be invoked in exceptional cases only when the High

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1. (1964) Jab. I.L.R. 277, cited in P. Ramanatha Iyer; Code of Criminal Procedure, (1965), Vol. 3, page 2286.

2. *Raghubar Dayal* v. *Emp.*, I.L.R. 13 Luck. 720; A.I.R. 1938 Oudh 81, 82.

3. *Adkoo Umrao* v. *Emp.*, I.L.R. 1939 Nag. 170; A.I.R. 1938 Nag. 420, 421 (Grille J.).

4. *Kimat Rai* v. *Emp.*, A.I.R. 1945 Lah. 215, 216 (Munir J.).

5. *In re District Magistrate Vizagapatam*, A.I.R. 1949 Mad. 77.

6. *In re Kote Appalakonda*, A.I.R. 1942 Mad. 740.

7. *P.P.* v. *Raghuramiah*, (1957) 2 Andhra W.R. 383. (Chandra Reddy). *In re* Saradamma A.I.R. 1965 A.P. 444.

8. *Re.* v. *Genda Singh*, A.I.R. 1950 All. 525.

9. *Jayantilal* v. *State* (1966) Cr. L.J. 209 (Gujarat).

10. *Talab Hussain*, (1958) S.C.R. 1227; A.I.R. 1958 S.C. 376, affirming *Mudhukar Purushottam*, A.I.R. 1958 Bom. 406.

Court is satisfied that the ends of justice will be defeated unless the accused is committed to custody.[1]

Recommendation regarding section 497.

16. So far as the first point[2] is concerned, the suggestion is a useful one. The existing position as to the power to impose conditions while granting bail is somewhat uncertain, though the power to impose conditions is recognised by most High Courts.[3]-[4] The proposed change will settle the law. It is, however, *necessary that* the conditions to be imposed must be such as are linked up with preventing the escape of the accused or preventing repetition of the offence or otherwise required in the interests of justice. Moreover, a condition tantamount to refusal of bail[5] ought not to be authorised.

17. So far as the second point—tampering with evidence[6]—is concerned, it does not appear to be necessary to mention tampering with evidence specifically as a ground for prohibiting bail. Release (in the case of a non-bailable offence) is in the discretion of the court. The Court can, therefore, even now take into account the possibility of tampering with evidence.[7]-[8]-[9]-[10]

The observations in a Supreme Court case also make this clear.[11]

It would not be necessary to over-emphasise this consideration, in granting or refusing bail.

Subject to these modifications, there is no harm in accepting the suggestion.

Whether sole object of bail is to secure attendance.

18. In connection with conditions intended to prevent a *repetition* of the offence, we should refer to one aspect of the matter which may be relevant to such conditions. A controversy appears to have existed at some time as to whether the *sole object* of bail is to secure attendance of the person released. We shall briefly deal with the position on the subject under English law and Indian law.

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1. *Ratilal Bhanji* v. *Asstt. Customs Collector* (1967) Cr. L.J. 1576, para. 5 (December) (Supreme Court).

2. Paragraph 8(i), *supra*.

3. Paragraphs 9—14, *supra*.

4. In England, a condition for medical examination can be imposed where an inquiry into physical or mental condition of the accused is necessary. See section 26(4), Magistrates' Courts Act, 1952 (15 & 16 Geo. 6 and I Eliz. 2 C. 55).

5. *See* paragraph 10, *supra*.

6. Paragraph 8(ii), *supra*.

7. *Public Prosecutor* v. *Sanyasayya*, A.I.R. 1925 Mad. 1224, 1225 (Courts Trotte D.C.J.).

8. *Harnarain*, A.I.R. 1958 Punj. 123, 127.

9. *K.E.* v. *Nga San-Htwa*, A.I.R. 1927 Rang. 205, 208 (F.B.), applying A.I.R. 1926 Rang. 51.

10. *Vidya Sagar*, A.I.R. 1962 Punj. 487, 488, paragraph 5.

11. See *State* v. *Jagjit Singh*, (1962) 3 S.C.R. 622; A.I.R. 1962 S.C. 253, 255, paragraphs 3 and 5, where some of the considerations in granting or refusing bail are outlined.

19. As to English law, the position has been thus stated[1]:— English law as to object of bail.

> "Bail is not to be withheld merely as a punishment."

The requirements as to bail are merely to secure the attendance of the defendant at the trial. *R.* v. *Rose*, 67 L.J. Q.B. 289.

203. The proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial. *Re Robinson*, 23 L.J. Q.B. 286.

The test should be applied by reference to the following considerations:—

(1) The nature of the accusation. *R.* v. *Barronet and Allain*, 1 E. & B. 1;

(2) The nature of the evidence in support of the accusation. *Re Robinson*, *ante*.

(3) The severity of the punishment which conviction will entail. *Re Robinson*, *ante*.

(4) Whether the sureties are independent, or indemnified by the accused person. *Hermann* v. *Jeuchner*, 15 Q.B.D. 561; *Consolidated Exploration etc. Co.* v. *Musgrave* [1900] 1 Ch. 37; *R.* v. *Porter* [1910] 1 K.B. 369; 3 Cr. App. R. 237.

For observations on the undesirability of bail being granted by magistrates in cases of house-breaking, where there is a likelihood of the offence being repeated, see *R.* v. *Phillips*, 32 Cr. App. R. 47.

20. A few cases may be referred to, to show how the discretion to grant bail is exercised in England. It was pointed out in one case,[2] that "it is the duty of the Justices to inquire into the antecedents of a man who is applying to them for bail."

In another case,[3] it was held that where the crime is of a nature that there is a likelihood of its being *repeated* if the accused is released, particularly where the evidence indicates that there is no defence to the charge preferred (*e.g.* accused arrested in the act of house-breaking), the grant of bail pending trial would be wrong.

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1. Archbold, Criminal Proceedings, etc. (1966), pages 71—72, paragraphs 202—203.

2. *R.* v. *Armstrong*, (1951) 2 All. E.R. 219 (C.C.A.). Stone's Justice Manual), (1962), Vol. I, paragraph 45, f.n. (h).

3. R V. Phillips, (1947) III J. P. 338; 32 Cr. App. Rep. 47 (C. C A.)

In that case, the applicant had pleaded guilty in two charges of house-breaking and larceny, and asked that ten similar outstanding offences be taken into consideration. Nine of these offences were committed while the applicant was on bail, seven before and two after his committal for trial. He was sentenced to four years' penal servitude. The Court of Criminal Appeal (Lord Goddard, C.J., Atkinson and Cassels, JJ.), in dismissing an application for leave to appeal against the sentence, made the following observations[1]:—

"The Court feels very strongly that the applicant ought not to have been released on bail. In cases of felony, bail is discretionary, and the matters which ought to be taken into consideration include the nature of the accusation, the nature of the evidence in support of the accusation, and the severity of the punishment which conviction will entail. Some crimes are not at all likely to be repeated pending trial, and in those cases there may be no objection to bail; but some are, and house-breaking particularly is a crime which will very probably be repeated if a prisoner is released on bail, especially in the case of a man who has a record for house-breaking such as the applicant had. It is an offence which can be committed with a considerable measure of safety..... There were three charges against the applicant. With regard to one, there was no defence; and in the case of another, he was actually arrested in the act. Yet in spite of all his previous convictions the applicant was given bail, not once but twice, first pending the hearing before the Magistrates, and again on committal for trial. To turn such a man loose on society until he has received his punishment for an undoubted offence, an offence which was not in dispute, was, in the view of the Court, a very inadvisable step. They wish Magistrates who release on bail young house-breakers, such as this applicant, to know that in nineteen cases out of 20 it is a mistake. The Court hopes that some publicity will be given to these observations, so that Magistrates may know the view of the Court of Criminal Appeal."

Indian law as to object of bail.

21. As to the Indian law, some of the cases[2] to which we have already referred while discussing how far conditional bail is permissible now, expressly or impliedly recognise, that while one object of bail is to secure attendance, other considerations cannot be ruled out.

22. This aspect of the matter, we find, was debated at length in the discussions[3] that took place in 1923, particularly in the speeches of Dr. Gour and the Law Member Dr. Mian Sir Muhammad Shafi.

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1. *See* Luxford, Police Law in New Zealand, (1950), page 91.

2. Paragraphs 9—14, 16, 17 (foot-notes), *supra*.

3. Legislative Assembly Debates, Vol. III, No. 35, dated 12th February, 1923.

The two sides of the question were well represented in the debate in the speech of Dr. Gour and the reply of the Law Member, which we quote:—

> "Dr. Gour—What does the existing provision, however, provide? It says: *no Magistrate shall release a person on bail if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.* The Magistrate is to prejudge the case and he is to say to the accused: I have reasonable grounds for believing that you have been guilty of this offence; therefore, whatever may be the reasons which would move me to release you on bail, you cannot be released on bail. That is the sole criterion from which Magistrates in India regard the question of bail. Now, if we turn to the English law, we shall find a very different criterion there for releasing persons on bail, and, in iniviting this House to adopt either the one or the other, I shall ask the House to remember what is the underlying principle for arresting a person and releasing him on bail. It requires no large legal training such as my Honourable friend, the last speaker, possesses, nor need one be an unpaid Magistrate to understand that. When a man is arrested, *the sole and single purpose of his arrest is that he should not run away,* and, when he is released on bail, the sole criterion for releasing him on bail and fixing the quantity of bail is that he should not run away. (Mr. N. M. Samarath: "Nor commit suicide"?). Very few people do that; and even people under arrest sometimes commit suicide. That is, the sole criterion. Well, I submit, if the Magistrate is assured that the man is not likely to run away—(The Honourable Sir Malcolm Hailey: "How?") best security against his absconding, is there any reason why he should be detained in custody?"

23. The reply of the Law Member was clear,—may be quoted:—

> "Dr. Sir Mian Mohammad Shafi:—Sir, it was said that the sole object of arrest is to prevent a person from running away or from protracting or delaying the trial. As a general rule that is a perfectly legitimate criterion. I admit that that is the *main purpose* of arrest. But cases might be conceived where *other considerations* also come in. Let me give but one case which is not only possible but which we, some of us who have practised at the Bar long enough, can well conceive. A man falls out with two brothers. Bitter enmity subsists between that one man on the one side and the two brothers on the other. He has a fight with these two brothers intending to kill them, but

succeeds only in killing one and injuring the other He is arrested by the police. There is ample evidence against him to prove that he murdered one of the two brothers, and he knows himself that he cannot escape. He knows that he is sure to be convicted and hanged. Well, now, in a case like that, is it not conceivable that he would like to be released on bail in order to go and kill the other brother also before he is hanged? (Laughter). With all deference, I am afraid that my Honourable friends from the South do not know what stuff people of the North are made of. It is perfectly conceivable that that man may be anxious to be released on bail in order to achieve the very object with which he assaulted the two brothers, which object he failed to achieve in the first instance, and succeeded only in killing the one and simply injuring the other brother; and knowing that he will be hanged, before he is actually hanged, he may take advantage of his release on bail to go and kill the other brother. Sir, with all deference it is hardly right to say that the sole consideration is his presence at the next date of hearing. There may be other considerations also which come in in cases of this kind.

It seems to me that taking all the circumstances into consideration, seeing that admittedly the clause as we propose it is a decided advance, a decided improvement in the existing law, seeing also that the clause as we propose it gives the fullest discretion to the Magistrate in even the most serious class of cases in certain instances to release on bail and prohibits release on bail only when circumstances or facts have been established which have led the Magistrate to believe or have reason to believe that the accused has committed the offence—only in this very narrow circle is he prohibited from releasing the accused on bail in this most serious of all crimes,—I submit that the Legislature ought not to go beyond that, that the Legislature should limit in such cases the discretion of the Magistrate in so far as release on bail in non-bailable cases is concerned.".

24. The matter seems to have attracted considerable **attention in India**, in various Editorial and other notes in **the Calcutta Weekly Notes**[1].

25. As we have already stated,[2] case-law in India does not rule out other considerations while deciding the grant of bail.

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1. For example, see 2 C.W.N. (Journal) 32; 16 C.W.N. (Journal) 286, 11 C.W.N. (Journal) 214; 12 C.W.N. (Journal) 253 and 13 C.W.N. (Journal) pages 3, 5 and 9.

2. Paragraph 21, *supra*.

Constitutional aspects of conditions of bail.

26. We also considered the question whether there would be any objection, on the score of interference with *fundamental rights*, particularly under article 19 of the Constitution, if conditions other than those intended to secure attendance are allowed to be imposed. We noted, that according to the decision of the Supreme Court[1], judicial orders in or in relation to matters brought before adjudication before a Court cannot be said to affect Fundamental Rights. The relevant portion of the majority judgment may be quoted—

> "(38) The argument that the impugned order affects the Fundamental Rights of the petitioners under article 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the Fundamental Rights of the citizens under article 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the Court and nothing more.
>
> If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by the Court in or in relation to a matter brought before it for its decision cannot be said to affect the Fundamental Rights of citizens under article. 19(1)."

27. We were, however, asked to consider whether, having regard to the fact that a condition intended to prevent repetition of an offence is not *directly* concerned with the proceedings before the Court which relate to the offence *already* committed, the majority judgment would cover it. We have come to the conclusion, that even as regards conditions intended to prevent repetition of *another offence*, there would be no constitutional objection.

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1. *Naresh* v. *State of Maharashtra*, A.I.R. 1967 S.C. 1, 11, 12, paragraph 38 (majority judgment).

The reason is, that the need for such conditions arises *because* the person is suspected of a serious offence, thereby raising a possibility that he may commit a similar offence in the future.

The observation that bail cannot be punitive[1] has, thus, to be qualified, to this limited extent, namely, in relation to the objective of deterrence of similar offences by imposing reasonable precautions.

Section 498 (1)—Introductory.

28. We now come to section 498. Section 498(1) can be divided into two portions. The first part provides that the amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive. This is also the English law,[2] where, in addition, a writ of *habeas corpus* can be applied for if the bail is excessive. The second part of section 498(1) provides that the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be *admitted to bail*, or that the bail required by a police officer or Magistrate be reduced. It is the latter half that is more important.

Section 498 (1)—Suggestion regarding.

29. The State Government[3] has suggested amendment of sub-section (1) of section 498 in the following terms:—

> "498(1):—The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or the Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail (*subject to such conditions as may appear necessary in the circumstances of the case*), or that the bail required by a police-officer or magistrate be reduced.
>
> Explanation:—*In granting a conditional bail, the court may impose condition requiring the person to reside in a particular locality or to abstain from visiting a particular locality or to report daily to the police or any other specified authority.*"

The amendment is on the same lines as those[4] proposed to section 497(1), except that there is no restriction as to the offences.

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1. Paragraph 19, *supra*.

2. Halsbury, 3rd Edn., Vol. 10, page 374, paragraph 678.

3. Law Commission's file No. F.3(2)/55-L.C. Part IV, S. No. 238 and F.3(2)/55-L.C. Part VI, S. No. 261.

4. See paragraph 6, *supra*.

30. The discretion under section 498 is very wide, and there is not much case-law[1] as to conditional bail under that section. Recommendation regarding section 498.

The amendment to section 498 may be accepted. But, in our view, the restriction regarding the offences should be incorporated in relation to section 498 also. Further, the conditions to be imposed should be on the same lines as indicated in the observations made by us[2] regarding the amendment proposed under section 497(1).

31. If the above changes are made,[3] it will be necessary to insert, in section 499, a sub-section to the effect that when a person has been released on bail on a condition, the bond shall *contain* that condition also. Section 499—Recommendation regarding.

32. In order to give a concrete picture of our recommendations,[4] we have, in an Appendix, put them in the form of draft amendments to the existing Code. Appendix.

1. J. L. KAPUR.—*Chairman.*
2. K. G. DATAR.
3. S. S. DULAT.
4. T. K. TOPE.
5. RAMA PRASAD MOOKERJEE.

} *Members.*

P. M. BAKSHI,
Joint Secretary and Legislative Counsel.

New Delhi, the 16th December, 1967.

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1. See paragraph 13, *supra.*
2. See paragraph 16, *supra.*
3. Paragraphs 16 and 20, *supra.*
4. Paragraphs 16, 30, 31, *supra.*

APPENDIX

Recommendations as shown in the form of draft amendments to the existing Code.

(This is a tentative draft only)

Section 497(1*A*) (*New*)

In the Code of Criminal Procedure, 1898 (hereinafter referred to as the principal Act), after sub-section (1), insert the following sub-section, namely:— 5 of 1898.

"(1*A*) *The Court may, when releasing on bail under sub-section* (1) *a person accused of or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of or conspiracy or attempt to commit any such offence, impose any condition which, in the circumstances of the case, the court considers necessary*— 45 of 1860.

(*a*) *in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or*

(*b*) *otherwise in the interests of justice.*".

Section 498

In section 498 of the principal Act,—

(*a*) in sub-section (1), insert the words "*or that any condition imposed by the Magistrate be set aside or modified*" *at the end;*

(*b*) after sub-section (1), insert the following sub-section, namely:—

"(1*A*) *The High Court or Court of Session may, when admitting to bail under sub-section* (1) *a person accused of or suspected of the commission of an offence punishable with imprisonment for a period which may extend to seven years or more or an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Panal Code or abet-* 45 of 1860.

ment of or conspiracy to or attempt to commit any such offence, impose any condition which, in the circumstances of the case, the court considers necessary—

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(b) otherwise in the interests of justice."

Section 499(1A) (New)

In section 499 of the principal Act, after sub-section (1), insert the following sub-section, namely:—

"(1A) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition."

GMGIPND—TSW—28M of Law—28-6-69—1,800.


सत्यमेव जयते